

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

PEDRO CABRERA-GUTIERREZ,
Defendant.

NO. CR-12-2027-WFN-1
CR-08-2029-WFN-1

ORDER

A pretrial conference and motion hearing was held May 7, 2012. The Defendant, who is in custody, was present and represented by Alison Guernsey; Assistant United States Attorney Alison Gregoire represented the Government. The Court heard argument regarding Defendant's Motion to Dismiss (CR-12-2027-WFN. ECF No. 23) and Motion to Dismiss Petition (CR-08-2029, ECF No. 91). Though the Court recognizes that following *United States v. George* being vacated, there is no binding precedent on the issues raised by Defendant in support of dismissal of the Indictment, the Court finds the reasoning in *George* persuasive and notes that the opinion was vacated on different grounds. 625 F.3d 1134 (9th Cir. 2010).

Regarding Defendant's Motion to Dismiss Petition, the Government acknowledges that the underlying Indictment likely suffers fatal flaws, but argues that adequacy of the Indictment has no bearing on the Government's ability to pursue supervised release violations. The Court urged the Government to consider requesting dismissal of the underlying Indictment due to the likely legal inadequacy of the underlying Indictment. In

1 the interests of justice, the Court dismissed the pending Petition, granting Defendant's
2 Motion to Dismiss Petition.

3 The Court has reviewed the file and Motions and is fully informed. This Order is
4 entered to memorialize and supplement the oral rulings of the Court. Accordingly,

5 **IT IS ORDERED** that:

6 **CR-12-2027-WFN-1**

7 1. Defendant's Motion to Dismiss Indictment, filed April 20, 2012, **ECF No. 23**, is
8 **DENIED**.

9 2. The trial date and final pretrial conference on **June 4, 2012**, are **CONFIRMED**.

10 3. Trial briefs, motions in limine, requested voir dire, witness and exhibit lists, and
11 a set of proposed **JOINT JURY INSTRUCTIONS** shall be filed and served on or before
12 **May 21, 2012**.

13 Jury instructions should only address issues that are unique to this case, and shall
14 include instructions regarding the elements of each claim, any necessary definitions and a
15 proposed verdict form.

16 The Joint Proposed Jury Instructions shall include:

17 (a) The instructions on which the parties agree; and

18 (b) Copies of instructions that are disputed (i.e., a copy of each party's proposed
19 version of an instruction upon which they do not agree). All jury instructions from the most
20 current edition of the Ninth Circuit Manual of Model Jury Instructions may be proposed by
21 number. The submission of the Joint Proposed Jury Instructions will satisfy the requirements
22 of LR 51.1(c).

23 Each party shall address any objections they have to instructions proposed by any
24 other party in a memorandum. The parties shall identify the specific portion of any proposed
25 instruction to which they object and shall elaborate the basis for the objection. Objections
26 asserting that an instruction sets forth an incorrect statement of law shall describe the legal

1 authority that supports this objection. Failure to file an objection and supporting argument
2 may be construed as consent to the adoption of an instruction proposed by another party.

3 4. A pretrial conference and motion hearing shall be held **via Yakima to Spokane**
4 **video conference on May 17, 2012, at 11:30 a.m.** The Defendant and counsel shall
5 participate from Yakima, the Court and its staff will participate from Spokane. This hearing
6 may be used for entry of a change of plea if the matter can resolve short of trial.

7 **CR-08-2029-WFN-1**

8 5. Defendant's Motion to Dismiss Petition, filed April 20, 2012, **ECF No. 91**, is
9 **GRANTED.**

10 6. The Petition filed March 26, 2012, **ECF No. 83**, is **DISMISSED.**

11 The District Court Executive is directed to file this Order and provide copies to
12 counsel **AND TO** United States Probation Officer Stephen Krous..

13 **DATED** this 8th day of May, 2012.

14
15
16 05-08-12

s/ Wm. Fremming Nielsen

WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE